

OCTOBER 1, 2021

Report of the Condominium and Common Interest Community Ombudsperson to the Illinois General Assembly



IDFPR

Illinois Department of
Financial and Professional Regulation

Division of Real Estate

**REPORT OF THE CONDOMINIUM AND COMMON INTEREST COMMUNITY OMBUDSPERSON
TO THE ILLINOIS GENERAL ASSEMBLY
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The Condominium and Common Interest Community Ombudsperson Act (765 ILCS 615/1, et. seq. (“Act”)), which took effect January 1, 2017, created, in the Division of Real Estate within the Department of Financial and Professional Regulation (“Department”), the Office of the Condominium and Common Interest Community Ombudsperson (“Office”). Among its charges, the Act required the Department to name an Ombudsperson and other persons as necessary to discharge the Act’s requirements. On January 1, 2017, the Director of the Department’s Division of Real Estate appointed Adrienne M. Levatino as Ombudsperson, whose mission is to provide information to unit owners, condominium and common interest community associations and their respective boards in order that they all may better understand their rights and obligations under the Condominium Property Act and the Common Interest Community Association Act.

Section 50 of the Act (765 ILCS 615/50) requires that the Department submit an annual written report on the activities of the Office to the General Assembly; the first report, pursuant to the terms of the Act, was filed on July 1, 2018. Beginning in 2019, the Act requires the Department to submit the report no later than October 1 of each year. In accordance with this requirement, the Office is hereby submitting this Report, which provides the information required by the Act.

Workload and Performance Data:

The Act requires that this Report set forth the following:

- (1) Annual workload and performance data, including (i) the number of requests for information; (ii) training, education, or other information provided; (iii) the manner in which education and training was conducted; and (iv) the staff time required to provide the training, education, or other information. For each category of data, the report shall provide subtotals based on the type of question or dispute involved in the request.

On January 1, 2017, the Office established its website at <https://www.idfpr.com/CCICO/>. This website is accessible from the Department’s Division of Real Estate website in addition to being independently accessible. Among its other content, the website contains an inquiry form for use by persons seeking information from the Office. The inquiry form is a useful tool for collecting complete contact and geographic information pertaining to those seeking information from the Ombudsperson.

During the period beginning July 1, 2020, and ending August 31, 2021, the Ombudsperson received 242 written inquiries. Of the persons submitting inquiries, 155 provided their address and all identified their “status” (attorney, board member, property manager, unit owner or “other”). The overwhelming majority of the total number (242) of individuals submitting inquiries (87%) were unit owners, while only 19 (approximately 8%) identified themselves as board members. Among those who submitted written inquiries, only 155 (64%) identified the municipality within which they resided. Of these, 66 (43%) of the persons providing geographic information lived or owned a unit in an association within the City of Chicago; 35 (22%) of the persons submitting providing geographic information lived or owned a unit in an association in Cook County outside the City of Chicago. The following is a breakdown by county of the number of inquiries received from individuals providing an address and residing outside of the City of Chicago and Cook County:

<u>County</u>	<u>Number of Inquiries</u>
Champaign	1
DuPage	29
Kane	2
Lake	7
McHenry	1
Ogle	1
Rock Island	1
Sangamon	3
Stephenson	1
Whiteside	1
Will	3
Williamson	1
Winnebago	2
Out of State	1
Total	54

The Ombudsperson was able to categorize inquiries by subject matter. Approximately 54% of the inquiries raised governance issues—whether a board provided adequate notice of meetings, whether the board improperly conducted business in closed session, whether board members were inappropriately compensated, and whether the association violated or failed to adhere to the provisions of the Condominium Property Act or the Common Interest Community Association Act or an association’s governance documents, for instance. A number of these inquiries sought detailed responses involving an interpretation of an association’s declaration and/or bylaws and the persons seeking responses of this nature were advised to carefully read their associations’ governing documents. Five percent of the inquiries involved unit owner’ rights to access records of an association. The Ombudsperson received 26 inquiries relating to internal or external complaint or dispute resolution processes, and eight questions relating to the adoption or imposition or budgets or assessments. Eleven questions related to the adoption or enforcement of rules. Of the inquiries received by the Ombudsperson, slightly more than one-quarter involved matters not readily susceptible to categorization, such as tenant conduct in common areas, the use and assignment of parking spaces, issues involving noise, the temperature in the common areas, leaks in units owned by others, and alleged zoning violations.

In response to the inquiries received by the Ombudsperson’s Office, individuals were provided with citations to the General Not for Profit Corporation Act, the Condominium Property Act or the Common Interest Community Association Act, as appropriate, and provided with generally responsive information. Persons submitting inquiries were informed that the Ombudsperson is prohibited from providing legal advice, has no power to enforce any laws or regulations, including the regulation or registration of professions, association, companies or people, and cannot hear, mediate or resolve issues between unit owners and associations. Persons making inquiries were also informed about the availability of educational documents on the Ombudsperson’s website.

The Ombudsperson has developed and posted a robust library of publications available on its website. These include the following eleven FAQs (“Frequently Asked Questions”):

What Are The Documents That Govern An Association?
How Do You Adopt Rules and Regulations?
What Are The Benefits Of Incorporation For Associations?
What Insurance Is An Association Required To Maintain?
How Does An Association Adopt A Budget?
What Are The Requirements For Meetings?
What Is Closed Session And What Can Be Decided There?
How Are Declarations and Rules Enforced?
How Does A Condo Association Adopt A Special Assessment?
Which Law Governs My Association?
How Does a Deconversion Work?

Section 35 of the Act requires that “[E]ach association, except for those outlined in subsection (b) of this Section, shall adopt a written policy for resolving complaints made by unit owners. The association shall make the policy available to all unit owners upon request.” Subsection (b) exempts Common interest community associations exempt from the Common Interest Community Association Act. To assist associations in complying with this requirement, the Ombudsperson’s Office prepared a sample Association Complaint Procedure and Sample Complaint Form and posted these to the Ombudsperson’s website in September 2018.

In addition, the Ombudsperson has prepared (and updated as necessary) two publications: “Condominium Unit Owners Rights and Responsibilities Handbook” and “Rights and Responsibilities of Association Board Members,” and promulgated “COVID-19 Guidance for Condominiums and Common Interest Community Associations.” The Ombudsperson’s website also contains links of the full text of the current versions of the following Illinois laws:

Condominium Property Act
Common Interest Community Association Act
Condominium and Common Interest Community Ombudsperson Act
Illinois General Not for Profit Corporation Act
Community Association Manager Licensing and Disciplinary Act
Community Association Manager Administrative Rules
Illinois Human Rights Act
Illinois Assistance Animal Integrity Act

The website also contains also contains a link to the following publication: “Illinois Department of Human Rights: A Guide to Your Fair Housing Rights.”

In addition, links to the following federal and local laws are accessible from the Ombudsperson’s website:

Americans with Disabilities Act
Federal Fair Housing Laws
Federal Fair Debt Collection Practices Act
Federal U.S. Flag Code
Federal Over-the-Air Reception Rule (“OTARD”)
HUD Final Rule: Project Approval for Single-Family Condominiums (08/15/2019)
City of Chicago Condominium Ordinance

Due to the continuing limitations imposed by the COVID-19 pandemic, no speaking events were scheduled.

The Ombudsperson role is not a full-time position and the Ombudsperson also serves as the Associate General Counsel in the Department's Division of Real Estate. The Ombudsperson has no additional staff. Approximately twenty percent of her time is devoted to serving as Ombudsperson.

Unit Owner Concerns

The Act further requires that this Report set forth the following:

- (2) Where relevant information is available, analysis of the most common and serious types of concerns within condominiums and common interest communities, along with any recommendations for statutory reform to reduce the frequency or severity of those disputes.

The Ombudsperson received 242 inquiries during the period covered by this Report and approximately 684 total inquiries since establishment of the Ombudsperson's Office. Many of these consisted of lengthy narratives portraying dissatisfaction with boards allegedly ignoring the requirements (and, particularly, the election, records production and open meetings requirements) of either the Condominium Property Act or the Common Interest Community Association Act. Numerous other of these narratives evidenced confusion as to how the Condominium Property Act is enforced and by whom. Unit owners also sought advice as to what constituted a "common element" in their association and who, therefore, was responsible for the making of and cost of repairs, whether special assessments had been properly adopted, and what documents a condominium association must make available to unit owners for inspection and copying.

The Ombudsperson believes that because the Office of the Ombudsperson is relatively new and the amount of anecdotal information available from the inquiries received to date is limited, it is premature to make any recommendations for statutory reform at this time. It is clear, however, even from the limited amount of data and from questions raised at the forums in which the Ombudsperson participated since the inception of the Office, that both unit owners and associations would benefit from more effective, transparent and timely communication among and between unit owners and association boards of managers.

¹ Since the inception of the Ombudsperson's Office, 68 individuals accounted for 26% of the total number of inquiries.